



Reprinted
March 30, 2007

ENGROSSED HOUSE BILL No. 1092

DIGEST OF HB 1092 (Updated March 29, 2007 2:24 pm - DI 103)

Citations Affected: IC 10-16; IC 10-17; IC 22-2; IC 22-9; noncode.

Synopsis: Military service benefits. Establishes an unpaid leave of absence of up to 10 working days for the spouse, parent, grandparent, or sibling of a person ordered to active duty in the United States armed forces or the National Guard. Requires an employee to provide written notice and a copy of the active duty orders, if available, before taking the leave. Provides that an employee taking leave is permitted, or may be required, to use certain paid leave to which the employee is entitled. Requires an employee to be restored to the position that the employee held before the leave or to an equivalent position. Requires an employer to permit an employee who is taking a leave to continue the employee's health care benefits at the employee's expense. Provides equitable remedies for violations. Provides for grants from the military family relief fund for child care assistance. Provides that a person who furnishes lodging for compensation commits a class C infraction if the person refuses to rent a room to an individual who is (1) under 21 years of age; and (2) on active military duty. Exempts an individual on active military duty from serving on a jury.

Effective: July 1, 2007.

Avery, Hinkle, Stilwell, Reske

(SENATE SPONSORS — DELPH, SIMPSON, WYSS)

January 8, 2007, read first time and referred to Committee on Small Business and Economic Development.

January 18, 2007, amended, reported — Do Pass.

January 25, 2007, read second time, amended, ordered engrossed.

January 26, 2007, engrossed. Read third time, passed. Yeas 88, nays 0.

SENATE ACTION

February 19, 2007, read first time and referred to Committee on Pensions and Labor.

March 22, 2007, amended, reported favorably — Do Pass.

March 29, 2007, read second time, amended, ordered engrossed.

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EH 1092—LS 6397/DI 103+



Reprinted
March 30, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1092

A BILL FOR AN ACT to amend the Indiana Code concerning
military service.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 10-16-16-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. ~~An officer and~~
3 ~~enlisted person of the Indiana national guard is exempt from:~~

4 (1) ~~service on any jury in any court of Indiana; and~~

5 (2) ~~service in any posse comitatus.~~

6 **An individual who serves on active duty in the armed forces of the**
7 **United States or the Indiana National Guard is exempt from**
8 **service on any jury in any court of Indiana.**

9 SECTION 2. IC 10-17-12-8, AS ADDED BY P.L.58-2006,
10 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2007]: Sec. 8. (a) The military family relief fund is established
12 beginning January 1, 2007, to provide assistance with food, housing,
13 utilities, medical services, basic transportation, **child care**, and other
14 essential family support expenses that have become difficult to afford
15 for families of Indiana residents who are:

16 (1) members of:

17 (A) a reserve component of the armed forces; or

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- 1 (B) the national guard; and
 2 (2) called to active duty after September 11, 2001.
 3 (b) The department shall expend the money in the fund exclusively
 4 to provide grants for assistance as described in subsection (a).
 5 (c) The director shall administer the fund.
 6 SECTION 3. IC 22-2-13 IS ADDED TO THE INDIANA CODE AS
 7 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 8 1, 2007]:

9 **Chapter 13. Military Family Leave**

10 **Sec. 1. This chapter applies to an employer that employs at least**
 11 **fifty (50) employees for each working day during each of at least**
 12 **twenty (20) calendar work weeks.**

13 **Sec. 2. As used in this chapter, "armed forces of the United**
 14 **States" means the active or reserve components of:**

- 15 (1) the Army;
 16 (2) the Navy;
 17 (3) the Air Force;
 18 (4) the Coast Guard;
 19 (5) the Marine Corps; or
 20 (6) the Merchant Marine.

21 **Sec. 3. As used in this chapter, "employee" means a person**
 22 **employed or permitted to work or perform services for**
 23 **remuneration under a contract of hire, written or oral, by an**
 24 **employer.**

25 **Sec. 4. As used in this chapter, the term "employer" includes the**
 26 **state and political subdivisions of the state.**

27 **Sec. 5. As used in this chapter, "grandparent" means a**
 28 **biological grandparent.**

29 **Sec. 6. As used in this chapter, "health care benefits" means**
 30 **employer provided health coverage, including coverage for medical**
 31 **care, prescription drugs, vision care, medical savings accounts, or**
 32 **any other health related benefit.**

33 **Sec. 7. As used in this chapter, "active duty" means full-time**
 34 **service on active duty orders in:**

- 35 (1) the armed forces of the United States; or
 36 (2) the National Guard;
 37 for a period that exceeds eighty-nine (89) consecutive calendar
 38 days.

39 **Sec. 8. As used in this chapter, "National Guard" means:**

- 40 (1) the Indiana Army National Guard; or
 41 (2) the Indiana Air National Guard.

42 **Sec. 9. As used in this chapter, "parent" means:**

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- (1) a biological father or mother;
- (2) an adoptive father or mother; or
- (3) a court appointed guardian or custodian.

Sec. 10. As used in this chapter, "sibling" means a brother or sister by blood, half-blood, or adoption.

Sec. 11. (a) An employee who:

- (1) has been employed by an employer for at least twelve (12) months;
- (2) has worked at least one thousand five hundred (1,500) hours during the twelve (12) month period immediately preceding the day the leave begins; and
- (3) is the spouse, parent, grandparent, or sibling of a person who is ordered to active duty;

is entitled to an unpaid leave of absence as provided in subsection (b).

(b) An employee may take a leave of absence during one (1) or more of the following periods:

- (1) During the thirty (30) days before active duty orders are in effect.
- (2) During a period in which the person ordered to active duty is on leave while active duty orders are in effect.
- (3) During the thirty (30) days after the active duty orders are terminated.

(c) The leave of absence allowed each year under subsection (a) may not exceed a total of ten (10) working days.

(d) An eligible employee may elect, or an employer may require the employee, to substitute any earned paid vacation leave, personal leave, or other paid leave, except for paid medical or sick leave, available to the employee for leave provided under this chapter for any part of the ten (10) day period of such leave.

Sec. 12. (a) An employee who wants to take a leave of absence under this chapter shall provide written notice, including a copy of the active duty orders if available, to the employee's employer of the date the leave will begin. An employee shall give at least thirty (30) days notice before the date on which the employee intends to begin the leave, unless the active duty orders are issued less than thirty (30) days before the date the requested leave is to begin.

(b) An employer may require verification of an employee's eligibility for the leave. If an employee fails to provide verification required under this subsection, an employer may consider the employee's absence from employment unexcused.

Sec. 13. (a) Except as provided in subsection (b), after an

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employee takes a leave of absence under this chapter, an employee must be restored to:

- (1) the position that the employee held before the leave; or
- (2) a position equivalent to the position that the employee held before the leave, with equivalent seniority, pay, benefits, and other terms and conditions of employment.

(b) An employer is not required to restore an employee to a position described in subsection (a) if the employer proves that the reason that the employee was not restored to the position is unrelated to the employee's exercise of the employee's rights under this chapter.

Sec. 14. An employer shall permit an employee who is taking a leave of absence under this chapter to continue the employee's health care benefits at the employee's expense.

Sec. 15. An employer shall not interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this chapter.

Sec. 16. (a) An employee may bring a civil action at law to enforce this chapter.

(b) A circuit court may:

- (1) enjoin any act or practice that violates this chapter; and
- (2) order any other equitable relief that is just and proper under the circumstances to redress the violation of or to enforce this chapter.

SECTION 4. IC 22-9-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 9. Access to Public Accommodations by Active Duty Military Personnel

Sec. 1. As used in this chapter, "active duty" means full-time service in the:

- (1) armed forces of the United States; or
- (2) National Guard.

Sec. 2. As used in this chapter, "armed forces of the United States" means the active or reserve components of the:

- (1) Army;
- (2) Navy;
- (3) Air Force;
- (4) Coast Guard;
- (5) Marine Corps; or
- (6) Merchant Marine.

Sec. 3. As used in this chapter, "National Guard" means the:

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1 (1) Indiana Army National Guard or the Army National
2 Guard of another state; or

3 (2) Indiana Air National Guard or the Air National Guard of
4 another state.

5 Sec. 4. A person who provides lodging for compensation at a
6 motel, a hotel, or another place of public accommodation may not
7 refuse to rent or lease a room to an individual solely because the
8 individual is less than twenty-one (21) years of age if the individual
9 is on active duty.

10 Sec. 5. A person who violates this chapter commits a Class C
11 infraction.

12 SECTION 5. [EFFECTIVE JULY 1, 2007] IC 22-2-13, as added
13 by this act, does not excuse noncompliance with a provision of a
14 collective bargaining agreement or other employment benefit
15 program or plan in effect on July 1, 2007, that is not in substantial
16 conflict with IC 22-2-13, as added by this act. IC 22-2-13, as added
17 by this act, does not justify an employer reducing employment
18 benefits provided by the employer that exceed the benefits required
19 by IC 22-2-13, as added by this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1092, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 8 through 12.

Page 1, line 13, delete "3." and insert "2.".

Page 2, line 4, delete "4." and insert "3.".

Page 2, line 8, delete "5." and insert "4.".

Page 2, line 10, delete "6." and insert "5.".

Page 2, between lines 13 and 14, begin a new paragraph and insert:

"Sec. 6. As used in this chapter, "involuntary active duty" means full-time service on involuntary orders in:

(1) the armed forces of the United States; or

(2) the National Guard;

for a period that exceeds eighty-nine (89) consecutive calendar days."

Page 2, line 27, delete "called to" and insert **"ordered to involuntary"**.

Page 2, line 28, delete "duty for deployment overseas;" and insert **"duty;"**.

Page 2, line 29, delete "this chapter" and insert **"subsection (b)."**

Page 2, delete lines 30 through 31, begin a new paragraph and insert:

"(b) An employee may take a leave of absence during one (1) or more of the following periods:

(1) During the thirty (30) days before involuntary active duty orders are in effect.

(2) During a period of leave while involuntary active duty orders are in effect.

(3) During the thirty (30) days after the involuntary active duty orders are terminated."

Page 2, line 32, delete "(b)" and insert **"(c)"**.

Page 2, line 33, delete ":".

Page 2, delete line 34.

Page 2, line 35, delete "(2)".

Page 2, line 35, delete "days for a parent." and insert **"days."**

Page 2, run in lines 33 through 35.

Page 2, line 36, delete "(c)" and insert **"(d)"**.

Page 2, line 37, after "other leave" insert **", including additional military family leave offered at the discretion of an employer,"**.

Page 2, line 41, delete "If the leave will last at least five (5)".

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Page 2, line 42, delete "consecutive work days, the" and insert "**An**".

Page 2, line 42, after "shall" insert "**attempt to**".

Page 3, line 2, delete "If the leave will last less than five (5) consecutive work" and insert "**In any event,**".

Page 3, line 3, delete "days,".

Page 3, delete lines 4 through 5, begin a new paragraph and insert:

"(b) An employer may require verification of an employee's eligibility for the leave. If an employee fails to provide verification required under this subsection, an employer may consider the employee's absence from employment unexcused."

and when so amended that said bill do pass.

(Reference is to HB 1092 as introduced.)

ORENTLICHER, Chair

Committee Vote: yeas 11, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1092 be amended to read as follows:

Page 4, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 2. IC 22-9-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 9. Access to Public Accommodations by Active Duty Military Personnel

Sec. 1. As used in this chapter, "active duty" means full-time service in the:

- (1) armed forces of the United States; or**
- (2) National Guard.**

Sec. 2. As used in this chapter, "armed forces of the United States" means the active or reserve components of the:

- (1) Army;**
- (2) Navy;**
- (3) Air Force;**
- (4) Coast Guard;**
- (5) Marine Corps; or**
- (6) Merchant Marine.**

Sec. 3. As used in this chapter, "National Guard" means the:

- (1) Indiana Army National Guard or the Army National**

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Guard of another state; or

(2) Indiana Air National Guard or the Air National Guard of another state.

Sec. 4. A person who provides lodging for compensation at a motel, a hotel, or another place of public accommodation may not refuse to rent or lease a room to an individual solely because the individual is less than twenty-one (21) years of age if the individual is on active duty.

Sec. 5. A person who violates this chapter commits a Class C infraction."

Renumber all SECTIONS consecutively.

(Reference is to HB 1092 as printed January 19, 2007.)

BROWN C

HOUSE MOTION

Mr. Speaker: I move that House Bill 1092 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 10-16-16-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. ~~An officer and enlisted person of the Indiana national guard is exempt from:~~

~~(1) service on any jury in any court of Indiana; and~~

~~(2) service in any posse comitatus.~~

An individual who serves on active duty in the armed forces of the United States or the Indiana National Guard is exempt from service on any jury in any court of Indiana."

Renumber all SECTIONS consecutively.

(Reference is to HB 1092 as printed January 19, 2007.)

KOCH

HOUSE MOTION

Mr. Speaker: I move that House Bill 1092 be amended to read as follows:

Delete the title and insert the following:

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A BILL FOR AN ACT to amend the Indiana Code concerning military service.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-8.1-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 4. (a) Every individual (other than a nonresident) who files an individual income tax return and who is entitled to a refund from the ~~Indiana~~ department of **state** revenue because of the overpayment of income tax for a taxable year may designate on ~~his~~ **the individual's** annual state income tax return that either a specific amount or all of the refund to which ~~he~~ **the individual** is entitled shall be paid over to **one (1) or more of the** ~~nongame fund. In the event that the individual designates that a certain amount shall be paid over to the nongame fund and funds described in subsection (d). If the refund to which he the individual is entitled is less than the total amount designated such designation shall mean that to be paid over to one (1) or more of the funds described in subsection (d), all of the refund to which he the individual is entitled shall be paid over to the nongame fund; designated funds, but in an amount or amounts reduced proportionately for each designated fund. If an individual designates all of the refund to which the individual is entitled to be paid over to one (1) or more of the funds described in subsection (d) without designating specific amounts, the refund to which the individual is entitled shall be paid over to each fund described in subsection (d) in an amount equal to the refund divided by the number of funds described in subsection (d), rounded to the lowest cent, with any part of the refund remaining due to the effects of rounding to be deposited in the nongame fund.~~

(b) Every husband and wife (other than nonresidents) who file a joint income tax return and who are entitled to a refund from the ~~Indiana~~ department of **state** revenue because of the overpayment of income tax for a taxable year may designate on their annual state income tax return that either a specific amount or all of the refund to which they are entitled shall be paid over to **one (1) or more of the** ~~nongame fund. In the event that the husband and wife designate that a certain amount shall be paid over to the nongame fund and funds described in subsection (d). If the refund to which they a husband and wife are entitled is less than the total amount designated such designation shall mean that to be paid over to one (1) or more of the funds described in subsection (d), all of the refund to which they the husband and wife are entitled shall be paid over to the nongame fund; designated funds, but in an amount or amounts reduced~~

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proportionately for each designated fund. If a husband and wife designate all of the refund to which the husband and wife are entitled to be paid over to one (1) or more of the funds described in subsection (d) without designating specific amounts, the refund to which the husband and wife are entitled shall be paid over to each fund described in subsection (d) in an amount equal to the refund divided by the number of funds described in subsection (d), rounded to the lowest cent, with any part of the refund remaining due to the effects of rounding to be deposited in the nongame fund.

(c) In addition to a designation under subsection (a) or (b), a taxpayer who:

(1) is a resident of Indiana; and

(2) files an individual or joint income tax return;

may designate on the taxpayer's annual state income tax return that the taxpayer desires to contribute to one (1) or more of the funds described in subsection (d) by stating the amount of the contribution, but the amount may not be less than one dollar (\$1).

(d) Designations under subsection (a), (b), or (c) may be directed only to the following funds:

(1) The nongame fund.

(2) The military family relief fund.

(e) The instructions for the preparation of individual income tax returns shall contain a description of the purposes of **the following**:

(1) The nongame and endangered species program. ~~which is~~ **The description of this program shall be** written in cooperation with the department of natural resources.

(2) **Grants for the relief of military families disbursed from the military family relief fund. The description of the purposes of these grants shall be written in cooperation with the Indiana department of veterans' affairs.**

(f) Individual income tax returns must include a statement that:

(1) a contribution under subsection (c) does not reduce the taxpayer's tax;

(2) a contribution under subsection (c) will:

(A) decrease or eliminate the refund owed to the taxpayer, if any;

(B) increase the amount that must accompany the return; or

(C) result in both of the consequences described in clauses (A) and (B); and

(3) the failure to include with the taxpayer's tax return all or part of the increased amount referred to under subdivision

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(2)(B) will reduce the designated contribution to the extent that the increased amount is not included with the return.

(g) The department shall interpret a designation on a return under subsection (a), (b), or (c) that is illegible or otherwise not reasonably discernible to the department as if the designation had not been made.

SECTION 2. IC 10-17-12-1, AS ADDED BY P.L.58-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. As used in this chapter, "active duty" means full-time service in:

(1) the armed forces;

~~(1)~~ **(2)** a reserve component of the armed forces; or

~~(2)~~ **(3)** the national guard;

for a period that exceeds thirty (30) consecutive days in a calendar year.

SECTION 3. IC 10-17-12-8, AS ADDED BY P.L.58-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) The military family relief fund is established beginning January 1, 2007, to provide assistance with food, housing, utilities, medical services, basic transportation, **child care**, and other essential family support expenses that have become difficult to afford for families of Indiana residents who are:

(1) members of:

(A) the armed forces;

~~(A)~~ **(B)** a reserve component of the armed forces; or

~~(B)~~ **(C)** the national guard; and

(2) called to active duty after September 11, 2001.

(b) The department shall expend the money in the fund exclusively to provide grants for assistance as described in subsection (a).

(c) The director shall administer the fund."

Page 4, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 5. [EFFECTIVE JANUARY 1, 2008] IC 6-8.1-9-4, as amended by this act, applies only to returns for taxable years beginning after December 31, 2007."

Renumber all SECTIONS consecutively.

(Reference is to HB 1092 as printed January 19, 2007.)

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred House Bill No. 1092, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- Page 1, delete lines 1 through 17.
- Delete page 2.
- Page 3, delete lines 1 through 27.
- Page 3, delete lines 36 through 42.
- Page 4, delete lines 1 through 2.
- Page 4, delete line 11.
- Page 4, line 12, reset in roman "(A)".
- Page 4, line 12, delete "(B)".
- Page 4, line 13, reset in roman "(B)".
- Page 4, line 13, delete "(C)".
- Page 5, line 1, delete ""involuntary active" and insert ""**active**".
- Page 5, line 2, delete "involuntary" and insert "**active duty**".
- Page 5, line 17, delete "two" and insert "**five**".
- Page 5, line 17, delete "fifty (1,250)" and insert "**(1,500)**".
- Page 5, line 21, delete "involuntary".
- Page 5, line 26, delete "involuntary".
- Page 5, line 28, delete "of" and insert "**in which the person ordered to active duty is on**".
- Page 5, line 28, delete "involuntary".
- Page 5, line 30, delete "involuntary".
- Page 5, line 33, after "(10)" insert "**working**".
- Page 5, between lines 33 and 34, begin a new paragraph and insert:
"(d) An employer may require an employee taking a leave of absence under this chapter to use vacation leave, personal leave, or any other paid leave available to the employee."
- Page 5, delete lines 34 through 37.
- Page 5, line 39, delete "notice" and insert "**written notice, including a copy of the active duty orders if available,**".
- Page 5, line 40, delete "attempt to".
- Page 5, line 42, delete "leave. In any event, the employee" and insert
"leave, unless the active duty orders are issued less than thirty (30) days before the date the requested leave is to begin."
- Page 6, delete line 1.
- Page 6, line 18, delete "(a)".
- Page 6, delete lines 21 through 23.
- Page 6, line 24, delete "(a)".

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Page 6, delete lines 27 through 30.
 Page 7, delete lines 25 through 27.
 Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1092 as reprinted January 26, 2007.)

KRUSE, Chairperson

Committee Vote: Yeas 7, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1092 be amended to read as follows:

Page 2, between lines 26 and 27, begin a new paragraph and insert:

"Sec. 5. As used in this chapter, "grandparent" means a biological grandparent."

Page 2, line 27, delete "Sec. 5." and insert **"Sec. 6."**

Page 2, line 31, delete "Sec. 6." and insert **"Sec. 7."**

Page 2, line 37, delete "Sec. 7." and insert **"Sec. 8."**

Page 2, line 40, delete "Sec. 8." and insert **"Sec. 9."**

Page 3, between lines 1 and 2, begin a new paragraph and insert:

"Sec. 10. As used in this chapter, "sibling" means a brother or sister by blood, half-blood, or adoption."

Page 3, line 2, delete "Sec. 9." and insert **"Sec. 11."**

Page 3, line 8, delete "spouse or parent" and insert **"spouse, parent, grandparent, or sibling"**.

Page 3, line 25, delete "Sec. 10." and insert **"Sec. 12."**

Page 3, line 36, delete "Sec. 11." and insert **"Sec. 13."**

Page 4, line 6, delete "Sec. 12." and insert **"Sec. 14."**

Page 4, line 9, delete "Sec. 13." and insert **"Sec. 15."**

Page 4, line 12, delete "Sec. 14." and insert **"Sec. 16."**

(Reference is to EHB 1092 as printed March 23, 2007.)

YOUNG R MICHAEL

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1092 be amended to read as follows:

Page 3, line 22, delete "An employer may require an employee taking a leave of" and insert "**An eligible employee may elect, or an employer may require the employee, to substitute any earned paid vacation leave, personal leave, or other paid leave, except for paid medical or sick leave, available to the employee for leave provided under this chapter for any part of the ten (10) day period of such leave.**".

Page 3, delete lines 23 through 24.

(Reference is to EHB 1092 as printed March 23, 2007.)

YOUNG R MICHAEL

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